S CONSTANTINE

v.

SOCIAL SECURITY ORGANISATION (SOCSO) & ANOR

COURT OF APPEAL, KUALA LUMPUR
NH CHAN JCA
KC VOHRAH J
MOHD NOOR AHMAD J
[CIVIL APPEAL NO: B-02-151-1995]
31 OCTOBER 1997

LABOUR LAW: *Social security - Invalidity pension - Whether sufficient to show that insured person is suffering from an incurable illness - Whether must show that insured person is incapable of engaging in any substantially gainful activity - Employees' Social Security Act 1969, s. 16(1) & (2)*

CIVIL PROCEDURE: *Parties - Joinder of parties - Leave of court, whether required - Whether there are common questions of law or fact involved - Whether concerned with the same transaction or series of transactions - Rules of the High Court 1980, O. 15 r. 4(1)*

The appellant had, in the same writ of summons, brought separate actions against the two respondents herein. In his statement of claim, the appellant claimed, as against the 1st respondent: (i) a declaration that the findings of the medical board (appointed by the 2nd respondent) that the appellant was suffering from invalidity (which findings were relied upon by the 2nd respondent to terminate the appellant's services) were within the meaning of s. 16 of the Employees' Social Security Act 1969 ('the Act'), thereby entitling the appellant to invalidity pension under s. 17 of the Act; and (ii) a determination that the 1st respondent was bound by the said findings of the medical board. Alternatively, as against the 2nd respondent, the appellant claimed: (i) an order that the 2nd respondent do pay the appellant the sum of RM51,768,75; or (ii) alternatively, a declaration that the termination of the appellant's services by the 2nd respondent in reliance on the said findings of the medical board was null and void and of no effect.

Held:
Per NH Chan JCA

[1] Under O. 15 r. 4(1) of the Rules of the High Court 1980 ('the RHC') the leave of the High Court is **required** if: (i) there is **no** common question of law or fact involved in the actions (r. 4(1)(a)); and (ii) the rights to the relief claimed in the statement of claim against each of

the defendants are **not** concerned with the same transaction or series of transactions (r. 4(1)(b)).

[1a] In the present case, the appellant had joined the two respondents together in the same action as defendants without the leave of the court. This was misplaced. The appellant's claim against the 1st respondent was for a declaration that he was entitled to invalidity pension under s. 17 of the Act, whereas, his claim against the 2nd respondent was for damages or reinstatement for wrongful dismissal. Both these claims were unrelated to each other with no common question of law or fact involved.

[2] Pursuant to s. 16(1) & (2) of the Act, it is **not** enough to show that the person concerned is suffering from an incurable illness; he must also be shown to be incapable of engaging in any substantially gainful activity. In the present case, the said findings of the medical board was not sufficient to qualify the appellant as suffering from invalidity. Therefore, the findings of the medical board was not a decision within the definition of s. 16 of the Act. Consequently, the appellant's instant appeal against the dismissal of his action against the 1st respondent must fail.

[3] There was absolutely no merit in the appellant's instant appeal against the dismissal of his action against the 2nd respondent. The cause of action was not pleaded nor was there any evidence to support a claim for wrongful dismissal.

[Appeal dismissed.]

*[**Bahasa Malaysia** Translation of Headnotes]*

Perayu telah, dalam writ saman yang sama, memulakan dua tindakan yang berasingan terhadap kedua-dua responden di sini. Dalam tuntutannya, perayu telah memohon, terhadap responden pertama: (i) satu pengisytiharan bahawa keputusan lembaga perubatan (yang dilantik oleh responden ke-2) bahawa perayu mengalami hilang upaya (keputusan yang mana telah responden kedua bergantung pada bagi menamatkan perkhidmatan perayu) adalah dalam maksud s. 16 Akta Keselamatan Sosial Pekerja 1969 ('Akta tersebut') yang dengan itu memberi perayu hak kepada pencen ilat di bawah s. 17 Akta tersebut, dan (ii) satu penentuan bahawa responden pertama terikat oleh keputusan lembaga perubatan tersebut. Secara alternatifnya, terhadap responden ke-2, perayu telah memohon: (i) perintah bahawa responden ke-2 hendaklah membayar perayu jumlah RM51,768.75; atau (ii) secara alternatifnya, satu pengisytiharan bahawa penamatan perkhidmatan perayu oleh responden ke-2 kerana bergantung pada keputusan lembaga perubatan adalah tak sah dan batal dan tidak berkesan.

Diputuskan:
Oleh NH Chan HMR

[1] Di bawah A. 15 k. 4(1) Kaedah-kaedah Mahkamah Tinggi 1980 ('KMT'), kebenaran Mahkamah Tinggi diperlukan jika: (i) tidak terdapat persoalan undang-undang biasa atau fakta yang terlibat dalam tindakan tersebut (k. 4(1)(a)); dan (ii) hak kepada relief yang dituntut dalam pernyataan tuntutan terhadap setiap satu defendan-defendan tidak berkaitan dengan transaksi yang sama atau siri-siri transaksi (k. 4(1)(b)).

[1a] Dalam kes semasa, perayu telah mengabungkan kedua-dua responden bersama-sama dalam tindakan yang sama sebagai defendan-defendan tanpa kebenaran mahkamah. Ini adalah salah. Tuntutan perayu terhadap responden pertama adalah bagi satu pengisytiharan bahawa beliau berhak kepada pencen ilat di bawah s. 17 Akta tersebut, sedangkan tuntutan beliau terhadap responden ke-2 adalah untuk gantirugi atau penempatan semula kerana pemecatan secara salah. Kedua-dua tuntutan ini adalah tidak berkaitan antara satu dengan yang lain tanpa persoalan undang-undang atau fakta yang terlibat.

[2] Selaras dengan s. 16(1) and (2) Akta tersebut, ianya adalah **tidak** memadai untuk menunjukkan bahawa orang yang berkenaan itu sedang mengalami penyakit yang tidak boleh pulih; beliau mestilah ditunjukkan sebagai tidak berkeupayaan untuk melibatkan diri dalam sebarang aktiviti yang menguntungkan. Dalam kes semasa ini, keputusan lembaga perubatan tersebut adalah tidak mencukupi bagi melayakkan perayu sebagai seorang yang kurang upaya. Dengan itu keputusan lembaga perubatan bukannya merupakan keputusan dalam definisi s. 16 Akta tersebut. Akibatnya, rayuan semasa perayu terhadap pembatalan tindakan beliau terhadap responden pertama mesti gagal.

[3] Secara mutlaknya, tidak terdapat merit dalam rayuan semasa perayu terhadap pembatalan tindakan beliau terhadap responden ke-2. Kausa tindakan telah tidak diplidkan mahupun terdapatnya sebarang keterangan untuk menyokong tuntutan bagi pemecatan secara salah.

[Rayuan ditolak.]

Legislation referred to:
Employees' Social Security Act 1969, ss. 16, 17
Rules of the High Court 1980, O. 15 r. 4(1)(a), (b)

[Appeal from High Court Malaya, Shah Alam; Suit No: 22-220-1992]

For the appellant - Shahrul Hameed Amirudin; M/s Gomez & Assoc
For the 1st respondent - Jayanthi Pillay (Zahrin Ishak with her); M/s Kadir, Tan & Ramli
For the 2nd respondent - Azlan Sulaiman; M/s Abdullah & Zainudin

JUDGMENT

NH Chan JCA:

The appellant has brought separate actions against each of the respondents, namely, the Social Security Organisation (SOCSO) and Lembaga Pelabuhan Klang in the same writ of summons. In his statement of claim, he claims:

(a) against the 1st defendant

(i) for a Declaration that by virtue of the Medical Board decision on 18th day of September, 1985 obtained by the 2nd Defendant that the Plaintiff is suffering from invalidity which is deemed to be of permanent nature, incurable and is not likely to be cured and in reliance of which the 2nd Defendant terminated the Plaintiff's services is within the meaning of the provisions under Section 16 of the Employees' Social Security Act, 1969 entitling the Plaintiff to receive Invalidity Pension pursuant to Section 17 of the Social Security Act 1969.

(ii) for a determination that the 1st Defendant is bound by the findings of the Medical Board convened by the 2nd Defendant on the 18th day of September, 1985.

(b) Alternatively against the 2nd Defendant

(i) for an order that the 2nd Defendant do pay to the Plaintiff said sum of $51,768.75;

(ii) alternatively for a Declaration that the termination of the Plaintiff by the 2nd Defendant, on Medical Grounds is null and void and of no effect and that the Plaintiff is still a Senior Clerical Officer of the 2nd Defendant entitled to all wages benefits and seniority, effective from the 30th day of October, 1985.

As can be seen, the appellant has joined the two respondents together in the same action as defendants without obtaining the leave of the court. Under O. 15 r. 4(1), leave of the High Court is required if there is no common question of law or fact involved in the two actions (r. 4(1)(a)) and the rights to the relief claimed in the statement of claim against each of the respondents are not concerned with the same transaction or series of transactions (r. 4(1)(b)). Here, the appellant's claim against SOCSO is for a declaration that he is entitled to receive invalidity pension under s. 17 of the Employees

Social Security Act 1969, whereas, in his claim against his employer, the second respondent, it is for damages or reinstatement for wrongful dismissal. Both these claims are quite unrelated to each other with no common question of law or fact involved.

Suffice it to say our observations are made to remind whoever was concerned in settling the statement of claim in this case to be more professional in future.

Be that as it may, we shall now deal with the appeal proper.

The Claim Against SOCSO (The First Respondent)

The relevant part of the claim against SOCSO in the appellant's statement of claim is as follows:

> 7. The plaintiff underwent four (4) surgical operations for Inguinal Hernia once on the right side and thrice on the left side a recurrence of Inguinal Hernia (Direct) weak lower abdominal wall musculative in 1970, 1972 at General Hospital, Kuala Lumpur and at the General Hospital, Klang in January 1984 and August 1984. Full particulars of which the 2nd defendant is fully aware.
>
> 15. On the 18th day of September, 1985 pursuant to the instructions of the 2nd Defendant the Plaintiff attended the Medical Board held at the Hospital Besar Tengku Ampuan Rahimah, Klang which decided that the Plaintiff be medically boarded out.
>
> 16. By a letter dated the 28th day of October, 1985 the 2nd Defendant terminated the Plaintiff's services effective from 12.00 midnight on the 30th day of October, 1985 on medical grounds as the Medical Board had recommended that the Plaintiff's injury:
>
> a) is deemed to be of permanent nature;
>
> b) is incapable of carrying out the duties of a Senior Clerical Officer;
>
> c) had resulted in the Plaintiff being unwell permanently.
>
> 17. On the 31st day of October, 1985 the Plaintiff filed an application for an Invalidity Pension at the 1st Defendant's office in Klang.
>
> 18. Notwithstanding the fact that a duly convened Medical Board has determined the disability of the Plaintiff. The Plaintiff was referred to another Medical Board convened by the 1st Defendant at the same Hospital on the 31st day of January, 1986.
>
> 25. By a letter dated the 8th day of January, 1988 the 1st Defendant informed the Plaintiff of the decision of the Appellate Medical Board held on the 16th day of December, 1987 in Forms PKS 13/(ILAT), upholding the

decision of the 1st Defendant's Medical Board held on the 31st day of January, 1986.

27. The Plaintiff contends and will contend that both the Defendants being statutory bodies, ought to have been satisfied with the findings of one Medical Board and in any event, in view of the Plaintiff having suffered loss and damages, the 1st Defendant was estopped in law and in fact from referring the Plaintiff to any further Medical Board.

And the appellant asks for a declaration to say that based on the findings on 18 September 1985 made by a Medical Board his employer had appointed, he is to be considered as suffering from invalidity as defined in s. 16 of the Employees Social Security Act 1969, thus, entitling him to receive invalidity pension under s. 17 of the Act.

The Medical Board appointed by the second respondent found on 18 September 1985 that the appellant is suffering from

> Recurrence of Inguinal Hernia (Direct) with weak lower abdominal wall musoulative. Patient is reluctant to have surgery in view of the past failure.

and that

> (a) the injury is permanent
>
> (b) and this causes him not being able to carry out his duty as a Senior Clerical Officer, and that the patient be recommended to be medically boarded out.

That is all that this Medical Board found. But that is not sufficient to qualify the appellant as suffering from invalidity. It is not enough to show that he is suffering from an incuable illness, he must also be incapable of engaging in any substantial gainful activity. See s. 16 of the Employees' Social Security Act which reads:

> 16(1) An insured person shall be considered as suffering from invalidity, if, by reason of a specific morbid condition of permanent nature, he is incapable of engaging in any substantially gainful activity.
>
> (2) For the purposes of sub-s. (1) -
>
> (a) a morbid condition shall be deemed to be of permanent nature if it is either incurable or is not likely to be cured;
>
> (b) a person shall be deemed to be incapable of engaging in a substantially gainful activity, if in consequence of the specific morbid condition of sickness or infirmity, he is no longer capable of earning, by work corresponding to his strength and physical ability which, in view of his training and former occupation, might reasonably be

> assigned to him at the place of his employment or at a similar place in the neighbourhood or in the same district, one-third of the customary earnings of a mentally and physically sound person with similar qualifications and training;

Therefore, the findings on 18 January 1985 of the Medical Board appointed by the second respondent was not a decision which could have come within the definition of s. 16 of the Act. As to why this Medical Board never considered the effect of s. 16 of the Act, it is because this Medical Board was appointed by the employer of the appellant and not by SOCSO. Had the Medical Board been appointed by SOCSO under s. 15 of the Act, the approach would have been different as the SOCSO appointed board will then have to consider whether the condition and situation of the appellant would come within the meaning of s. 16. In fact the Medical Board appointed by SOCSO did consider the effect of s. 16. DW1, Dr Peters who sat on the SOCSO Medical Board, put it, thus:

> ... whether the patient has disability that is permanent which incapacitated him to a degree that he will require medical attention, and secondly whether if he is capable of being employed in gainful activity where the income he would derive is less than 1/3 he was drawing at that time.

and the SOCSO Board then found, as follows:

> ... we find that the plaintiff can work as a clerical person in any other company in a similar situation. As such he does not qualify for invalidity pension (under the SOCSO Act).

It is because the Medical Board appointed by SOCSO had found against the appellant, that he now insists that the findings of the Medical Board appointed by his employer should prevail.

For the reasons which we have just stated, we find that the proposition in the declaration sought by the appellant against SOCSO to be preposterous and absurd. The action against SOCSO was misconceived and we dismissed the appeal.

On the question of judicial review and whether the action was an action for judicial review, we do not wish to say anything as the matter was not canvassed before us.

The Claim Against The Appellant's Employer (The Second Respondent)

Apart front stating that he had been medically boarded out in paras 15 and 16 of his statement of claim, there is no pleading for an action for wrongful dismissal. We reproduce below these two paragraphs from the statement of claim:

15. On the 18th day of September, 1985 pursuant to the instruction of the 2nd defendant the plaintiff attended the Medical Board held at the Hospital Besar Tengku Ampuan Rahimah, Klang which decided that the plaintiff be medically boarded out.

16. By a letter dated the 28th of October, 1985 the 2nd defendant terminated the plaintiff's services effective from 12 midnight or the 30th of October, 1985 on medical ground as the Medical Board had recommended that the plaintiff's injury:

a) is deemed to he of permanent nature;

b) is capable of carrying out the duties of a Senior Clerical Officer;

c) had resulted in the plaintiff being unwell permanently.

The judge below had found that there was no other evidence adduced by the plaintiff to challenge the findings of the Medical Board appointed by the second respondent and he went on to say,

> In fact, the plaintiff has accepted its findings and had not complained or protested to the 2nd defendants for being medically boarded out. He had accepted from the 2nd defendants all the gratuity and benefits due to him. It was only after more than 2½ years later, that when the plaintiff failed to secure invalidity pension from the 1st defendants that he conjured this allegation against the 2nd defendants.

There is absolutely no merit in the appellant's appeal against the dismissal of his action against the second respondent. Not only was the cause of action not pleaded, there was also no evidence to support a claim for wrongful dismissal. The judge was right in dismissing the action. We dismissed this appeal.

Reported by Gan Peng Chiang